IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1748 of 2007
With
FIRST APPEAL No. 1749 of 2007
To
FIRST APPEAL No. 1758 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT & 2 - Appellant(s)
Versus
AMBABEN WD/O SHANKARBHAI DABHAIBHAI - Defendant(s)

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Appearance :

MR SUNIT SHAH, LD. GOVERNMENT PLEADER for Appellant(s) : 1 – 3 IN FA NOS.1754 TO 1758 OF 2007 AND

MR SATYAM CHHAYA, AGP FOR APPELLANTS 1-3 IN FA NOS.1748 TO 1753 OF 2007

MR AJ PATEL for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 29/03/2007

COMMON ORAL JUDGMENT

1. The present First Appeals arise under the Land Acquisition Act read with the provisions of C.P.C., from the judgement and award of the Reference Court dated 31.12.2004 in Land Acquisition Reference No.1979 of 1997 to 1993 of 1997, excluding the Land Reference Nos.1980, 1982, 1985 and 1987 of 1997.
2. Heard Mr.Shah, learned Government Pleader with Mr.Chhaya, learned AGP for the appellant State and Mr.Jayesh M. Patel for Mr.A.J.Patel, learned Counsel appearing for the original claimants/respondents herein.
3. It appears that the lands in question situated at Village Gajera, Taluka Jambusa, District Bharuch were proposed to be acquired and ultimately the Notification under Section 4 of the Land Acquisition Act (hereinafter referred to as “the Act”) was published on 27.3.1996 and the Notification under Section 6 of the Act was published on 8.8.1996. The award was passed by the Land Acquisition Officer on 27.3.1997 and he fixed the price of the land at Rs.3.04 per sq. mtrs. The claimant being aggrieved by the decision of the Land Acquisition Officer in the award claimed the compensation at the rate of Rs.100/- per sq. mtrs. The matter was referred to the Reference Court and the Reference Court having

relied upon the earlier decision for Village Umra, ultimately has fixed the compensation at Rs.22.83 per sq. mtrs. plus the solatium and the interest and it is under these circumstances the present appeals.

4. The learned Counsel appearing for the appellant as well as the respondents are on agreement on the point that for the lands, which came to be acquired for the very project at Village Gajera pursuant to the notification of 1994, there were earlier Land Acquisition Reference Nos.2360 to 2369 of 1997 and the Reference Court in respect of the land acquired of Village Gajera had ordered Rs.16.10 per sq. mtrs., by relying upon another decision of the Reference Court of Village Uchhad, which is situated adjacent to Village Gajera and had fixed the compensation at the rate of Rs.16.10 per sq. mtrs. The matter was carried in appeal before this Court being First Appeals No.961 to 970 of 2007 and the Division Bench of this Court vide its judgement dated 27.2.2007, for the reasons recorded therein, found that the appreciation at the rate of 12% could not have been awarded and the rise as was considered by the Division Bench at the rate of Re.0.71 per sq. mtrs., for 11 years on the basis that in the year 1983 price of the land at Village Uchhad was fixed at Rs.7.10 per sq. mtrs. Consequently, approximately 10% rise by way of appreciation was

considered by the Division Bench in the said decision and it was found that the compensation would be at the rate of Rs.15/- per sq. mtrs., as against Rs.20/- per sq. mtrs., as ordered by the Reference Court therein.

5. The learned Counsel appearing for the original claimants has declared before the Court that if the appreciation is considered at the rate of 10% and consequently if the price is fixed at Rs.16/- per sq. mtrs., the original claimants are agreeable to accept the said amount as compensation, since the issue, in the submission of the learned Counsel for the original claimants, is covered by the decision of the Division Bench of this Court.

6. Mr.Shah, learned Government Pleader and Mr.Chhaya, learned AGP are not in a position to support any different view than the view taken by the Division Bench in the said decision.

7. It is undisputed that the land under acquisition is situated in the village Gajera. Further, for the acquisition of the land in question, Notification was issued in the year 1996. Therefore, if 10% rise in the price by way of appreciation is considered from the year 1994 on the basis of Rs.15/- per sq. mtrs., it may be more than Rs.16/- per sq. mtrs. However, as the original claimants have restricted their claim to Rs.16/- per sq. mtrs., I find that

such an amount of Rs.16/- per sq. mtrs., would rather be in the interest of the appellant State, since the surplus of Re.1 per sq. mtrs., which is less than 10% rise per year.

8. It may be recorded that for supporting the reduction of the price by this Court in the land acquisition proceedings arising for the very village Gajera in respect of which the notification was published in the year 1994, the Division Bench in the above referred decision, inter alia, observed at para 8 as under:-

> “8. From the record of the case it is evident that the claimants never claimed enhanced compensation either on the basis of yield or on the basis of comparable sale instances. What was relied upon by the claimants was previous award of the Reference Court relating to the lands of village Uchhad. As observed earlier, the assertion made by the witness for the claimants that the lands of village Uchhad were similar to the lands acquired in the instant case has almost gone unchallenged. The fact that the boundaries of two villages are adjoining to each other is not in

dispute. It is well settled that previous award of the Reference Court relating to a village which has attained finality can be considered to be a good piece of evidence for the purpose of determining market value of similar lands acquired subsequently from the adjoining village. Therefore, this Court is of the opinion that no error was committed by the Reference Court in placing reliance on the previous award of the Reference Court for the purpose of determining market value of the lands acquired in the instant case. On re-appreciation of evidence adduced before the Reference Court, this Court is of the opinion that the finding recorded by the Reference Court that the claimants were entitled to enhanced compensation on the basis of previous award of the Reference Court relating to the lands of village Uchhad cannot be interfered with and deserves to be upheld. However, it is agreed by the learned counsel for the claimants that the claimants would be entitled to reasonable rise in price of lands at the

rate of Rs.0.71 Ps.per sq.mt. for 11 years and if calculation is made on this basis, the claimants in all would be entitled to Rs.14.91 Ps. per sq.mt., which is rounded off to Rs.15/- per sq.mt. for the purpose of convenience and not at the rate of Rs.20/- per sq.mt. as calculated by the Reference Court. Thus, the finding recorded by the Reference Court that the claimants are entitled to compensation at the rate of Rs.20/- per sq.mt. in all will have to be modified by holding that the claimants would be entitled to compensation at the rate of Rs.15/- per sq.mt.”

9. In view of the reasons recorded hereinabove, if the circumstances of notification as published in the year 1994 under Section 4 of the Act and the notification as published under Section 4 of the Act in the present case in the year 1996 are considered, it appears that the claimants would be entitled to the compensation at the rate of Rs.16/- per sq. mtrs. as against Rs.22.83 per sq. mtrs., fixed by the Reference Court.

10. Hence, all appeals are partly allowed. The common judgement and award of the Reference

Court, which is impugned in the present proceedings qua the Land Reference Cases No.1979 of 1997 to 1993 of 1997, excluding the Land Reference Nos.1980, 1982, 1985 and 1987 of 1997 awarding in all compensation to the claimants at the rate of Rs.22.83 per sq. mtrs., for the acquired lands shall stand modified and it is held that all the concerned claimants shall be entitled to the compensation at the rate of Rs.16/- per sq. mtrs. The other benefits granted to the claimants by the impugned award are not interfered with and are confirmed. No order as to costs. Decree accordingly.

29.3.2007 **(Jayant Patel, J.)**

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